# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

LUIS ARREDONDO	)
Claimant	)
VS.	)
	) Docket No. 1,010,233
SYSCO FOODS	)
Respondent	)
AND	)
	)
FIDELITY & GUARANTY INSURANCE	)
Insurance Carrier	)

## ORDER

Respondent appeals the July 29, 2003 Preliminary Decision of Administrative Law Judge Robert H. Foerschler. Claimant was awarded benefits in the form of medical treatment.

### Issues

Did claimant provide timely notice of his alleged accident?

# FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Decision of the Administrative Law Judge should be affirmed.

Claimant worked for respondent as a laborer when, sometime in March 2003, he suffered an injury to his low back. The exact date of accident is not clear, although claimant's E-1 alleges March 10, 2003, through April 12, 2003. Claimant testified it was sometime in March and he believed he reported it to his supervisor approximately 30 days later. Respondent contends that a 30-day delay in reporting an accident is a violation of K.S.A. 44-520, which requires notice of accident within 10 days of the date of accident. The Board acknowledges respondent's position is legally accurate, but the evidence in this case simply does not support a reporting delay of 30 days by claimant.

The E-1 alleges March 10, 2003, and the work status form from Corporate Care, which is the first page of Claimant's Exhibit 1, indicates a date of accident of either March 8

or March 18, 2003. The copy provided to the Board is not clear. Both March 8 and March 18, 2003, would be within 10 days of March 10, 2003.

The first indication that claimant was receiving medical care is contained on the third and fourth pages of Claimant's Exhibit 1, the prescription refill sheets from Corporate Care. The prescription sheets for the medications Naproxen and Cyclobenzaprine both show date-filled dates of March 20, 2003.

The Board does note that the prescription sheets indicate that the medication was paid for in cash. However, that discrepancy is not explained in the record. The only testimony in the record, that being from claimant, was that he was referred to Corporate Care for treatment, including medication, after advising respondent of the accident. Based upon that somewhat skimpy testimony, the Board finds that claimant did provide notice of accident within 10 days as required by statute. Also, claimant's testimony that he told respondent of the accident approximately 30 days after experiencing the first pain does not coordinate with the medical evidence placed in the record. The Board can only assume that claimant's response was somewhat confused or perhaps, in some way, modified during the translation. The parties will have an opportunity at a regular hearing to clarify these apparent discrepancies.

As is always the case, preliminary hearing findings are not binding in a full hearing on the claim, but are instead subject to a full presentation of the facts.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated July 29, 2003, should be, and is hereby, affirmed.

## IT IS SO ORDERED.

	Dated this	day of September 2003
--	------------	-----------------------

#### BOARD MEMBER

c: C. Albert Herdoiza, Attorney for Claimant Mark E. Kolich, Attorney for Respondent Robert H. Foerschler, Administrative Law Judge Paula S. Greathouse, Director

<sup>&</sup>lt;sup>1</sup> McIntyre v. A. L. Abercrombie, Inc., 23 Kan. App. 2d 204, 929 P.2d 1386 (1996).